IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

MFA.No. 273 of 2003()

OPMV.268/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT: CLAIMANT:

T.L.ANTONY, AGED 56 YEARS,
S/O. LONAN, 48/1163, THACHUTHARA HOUSE,
ELAMAKKARA, COCHIN-26.

BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH

RESPONDENTS: RESPONDENTS 1 TO 3:
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1. C.A.MOHAMMED, S/O. ABDULLA,
AGED 40 YEARS, B-21, NORTH KADAVANTHRA,
GIRINAGAR, COCHIN-20.

2. K.K.LIRAR,
L.G. SEAFOODS, 142, WALL TAX ROAD, MADURA-600 003,
RESIDING AT 57, OUTER CIRCULAR ROAD,
KILPARK GARDEN COLONY, MADRAS-10.

3. NATIONAL INSURANCE CO. LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
MUTHOOT TOWERS, M.G.ROAD, COCHIN-35.

BY ADV. SRI.M.A.GEORGE
SRI.C.K.ABDUL RAHIM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 273 OF 2003

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Dated this the 24th day of October, 2007

J U D G M E N T

Heard. Admitted. Advocate Shri Abdul Rahim takes notice for respondents 1 and 2. Advocate Shri M.A. George takes notice for R3. Appeal itself is heard and disposed of.

2. Petitioner in O.P(MV) No.268 of 1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam is the appellant. Petitioner filed the O.P. claiming compensation alleging that he sustained injuries in a motor vehicle accident which occurred at 6.45 a.m. on 29.7.1994. It was averred that petitioner was riding his Moped bearing Reg. No.KCE-2947. When he reached in front of the India Gandhi Co-operative Hospital at Kadavantara, a car bearing Reg.No.KL-7/A-674 came in a rash or negligent manner and hit against the petitioner's vehicle causing injuries. It was averred that the accident occurred due to the negligence of the second respondent, driver of the car. Petitioner claimed Rs.50,000/- as compensation. Owner and driver of the car did not contest the case. Third respondent-Insurer alone contested the case.

It was contended that there was delay in filing the criminal complaint. It was contended that the insured had not reported the accident nor produced the vehicular records. Negligence alleged was denied. The quantum of compensation claimed was also disputed. It was contended that the accident occurred due to the negligence of the petitioner himself.

3. Tribunal found that the appellant did not produce report of the Motor Vehicle Inspector and the certified copy of the FIR. Tribunal further noted that there was delay in filing the criminal complaint and dismissed the Original Petition. Challenging that award, this MFA is filed.

4. The mere fact that there was some delay in filing the complaint is not a ground to deny compensation. The question is whether the appellant had sustained injuries or not in a motor vehicle accident. Considering all aspects of the matter, I am of the view that it is only just and proper that the appellant be given another opportunity to prove his case on merits. For that the purpose the case has to go back.

5. In the result, appeal is allowed. The award passed by the tribunal dismissing the O.P. is hereby set aside. The

case is remanded. Tribunal is directed to take O.P(MV) No.268 of 1996 back to file and dispose of the same afresh in accordance with law after affording opportunity to both sides to adduce evidence, if so advised.

Parties shall appear before the Tribunal on 5.12.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 273 OF 2003

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J U D G M E N T

24TH OCTOBER, 2007